

1 **FOREIGN DERIVED INTANGIBLE INCOME AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill modifies provisions relating to the payment of income tax on foreign-derived
8 intangible income.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ creates a subtraction from unadjusted income of corporate taxpayers for a
- 12 percentage of foreign-derived intangible income that parallels the federal deduction;
- 13 and
- 14 ▶ makes technical changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 This bill provides retrospective operation.

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **59-7-106**, as last amended by Laws of Utah 2017, Chapter 389

22

23 *Be it enacted by the Legislature of the state of Utah:*

24 Section 1. Section **59-7-106** is amended to read:

25 **59-7-106. Subtractions from unadjusted income.**

26 (1) In computing adjusted income, the following amounts shall be subtracted from
27 unadjusted income:

28 (a) the foreign dividend gross-up included in gross income for federal income tax
29 purposes under Section 78, Internal Revenue Code;

30 (b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the
31 taxpayer elects to deduct the net capital loss on the return filed under this chapter for the
32 taxable year for which the net capital loss is incurred;

- 33 (c) the decrease in salary expense deduction for federal income tax purposes due to
34 claiming the federal work opportunity credit under Section 51, Internal Revenue Code;
- 35 (d) the decrease in qualified research and basic research expense deduction for federal
36 income tax purposes due to claiming the federal credit for increasing research activities under
37 Section 41, Internal Revenue Code;
- 38 (e) the decrease in qualified clinical testing expense deduction for federal income tax
39 purposes due to claiming the federal credit for clinical testing expenses for certain drugs for
40 rare diseases or conditions under Section 45C, Internal Revenue Code;
- 41 (f) any decrease in any expense deduction for federal income tax purposes due to
42 claiming any other federal credit;
- 43 (g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and
44 (2)(b);
- 45 (h) any income on the federal corporation income tax return that has been previously
46 taxed by Utah;
- 47 (i) an amount included in federal taxable income that is due to a refund of a tax,
48 including a franchise tax, an income tax, a corporate stock and business tax, or an occupation
49 tax:
- 50 (i) if that tax is imposed for the privilege of:
- 51 (A) doing business; or
- 52 (B) exercising a corporate franchise;
- 53 (ii) if that tax is paid by the corporation to:
- 54 (A) Utah;
- 55 (B) another state of the United States;
- 56 (C) a foreign country;
- 57 (D) a United States possession; or
- 58 (E) the Commonwealth of Puerto Rico; and
- 59 (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;
- 60 (j) a charitable contribution, to the extent the charitable contribution is allowed as a
61 subtraction under Section 59-7-109;
- 62 (k) subject to Subsection (3), 50% of a dividend considered to be received or received
63 from a subsidiary that:

- 64 (i) is a member of the unitary group;
- 65 (ii) is organized or incorporated outside of the United States; and
- 66 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;
- 67 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a
- 68 foreign operating company;
- 69 (m) the amount of gain or loss that is included in unadjusted income but not recognized
- 70 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as
- 71 defined in Section 338, Internal Revenue Code, if an election has been made in accordance
- 72 with Section 338(h)(10), Internal Revenue Code;
- 73 (n) the amount of gain or loss that is included in unadjusted income but not recognized
- 74 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance
- 75 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
- 76 Revenue Code, has been made for federal purposes;
- 77 (o) subject to Subsection (5), an adjustment to the following due to a difference
- 78 between basis for federal purposes and basis as computed under Section 59-7-107:
- 79 (i) an amortization expense;
- 80 (ii) a depreciation expense;
- 81 (iii) a gain;
- 82 (iv) a loss; or
- 83 (v) an item similar to Subsections (1)(o)(i) through (iv);
- 84 (p) an interest expense that is not deducted on a federal corporation income tax return
- 85 under Section 265(b) or 291(e), Internal Revenue Code;
- 86 (q) 100% of dividends received from a subsidiary that is an insurance company if that
- 87 subsidiary that is an insurance company is:
- 88 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and
- 89 (ii) under common ownership;
- 90 (r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as
- 91 defined in Section 53B-8a-102, the amount of a qualified investment as defined in Section
- 92 53B-8a-102.5:
- 93 (i) that the corporation or a person other than the corporation makes into an account
- 94 owned by the corporation during the taxable year;

95 (ii) to the extent that neither the corporation nor the person other than the corporation
96 described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax
97 return; and

98 (iii) to the extent the qualified investment does not exceed the maximum amount of the
99 qualified investment that may be subtracted from unadjusted income for a taxable year in
100 accordance with Subsection 53B-8a-106(1);

101 (s) for a corporation that makes a donation, as that term is defined in Section
102 53B-8a-201, to the Student Prosperity Savings Program created in Section 53B-8a-202, the
103 amount of the donation to the extent that the corporation did not deduct the donation on a
104 federal income tax return;

105 (t) for purposes of income included in a combined report under Part 4, Combined
106 Reporting, the entire amount of the dividends a member of a unitary group receives or is
107 considered to receive from a captive real estate investment trust; ~~and~~

108 (u) the increase in income for federal income tax purposes due to claiming a:

109 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or

110 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code~~[-]; and~~

111 (v) for foreign-derived intangible income, the amount calculated by multiplying:

112 (i) the percentage described in Section 250, Internal Revenue Code, for foreign-derived
113 intangible income for the applicable taxable year; and

114 (ii) the amount of foreign-derived intangible income that is included in unadjusted
115 income.

116 (2) For purposes of Subsection (1)(b):

117 (a) the subtraction shall be made by claiming the subtraction on a return filed:

118 (i) under this chapter for the taxable year for which the net capital loss is incurred; and

119 (ii) by the due date of the return, including extensions; and

120 (b) a net capital loss for a taxable year shall be:

121 (i) subtracted for the taxable year for which the net capital loss is incurred; or

122 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue
123 Code.

124 (3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a
125 taxpayer shall first subtract from a dividend considered to be received or received an expense

126 directly attributable to that dividend.

127 (b) For purposes of Subsection (3)(a), the amount of an interest expense that is
128 considered to be directly attributable to a dividend is calculated by multiplying the interest
129 expense by a fraction:

130 (i) the numerator of which is the taxpayer's average investment in the dividend paying
131 subsidiaries; and

132 (ii) the denominator of which is the taxpayer's average total investment in assets.

133 (c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in
134 determining income apportionable to this state, a portion of the factors of a foreign subsidiary
135 that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the
136 combined report factors as provided in this Subsection (3)(c).

137 (ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign
138 subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be
139 included in the combined report factors is calculated by multiplying each factor of the foreign
140 subsidiary by a fraction:

141 (A) not to exceed 100%; and

142 (B) (I) the numerator of which is the amount of the dividend paid by the foreign
143 subsidiary that is included in adjusted income; and

144 (II) the denominator of which is the current year earnings and profits of the foreign
145 subsidiary as determined under the Internal Revenue Code.

146 (4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under
147 Subsection (1)(l):

148 (i) if the taxpayer elects to file a worldwide combined report as provided in Section
149 59-7-403; or

150 (ii) for the following:

151 (A) income generated from intangible property; or

152 (B) a capital gain, dividend, interest, rent, royalty, or other similar item that is
153 generated from an asset held for investment and not from a regular business trading activity.

154 (b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating
155 company:

156 (i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

157 (ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a
158 transaction that occurs between members of a unitary group.

159 (c) For purposes of the subtraction provided for in Subsection (1)(l), in determining
160 income apportionable to this state, the factors for a foreign operating company shall be
161 included in the combined report factors in the same percentages as the foreign operating
162 company's adjusted income is included in the combined adjusted income.

163 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
164 commission may by rule define what constitutes:

165 (i) income generated from intangible property; or

166 (ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is
167 generated from an asset held for investment and not from a regular business trading activity.

168 (5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of
169 a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax
170 credit is claimed if:

171 (i) there is a reduction in federal basis for a federal tax credit; and

172 (ii) there is no corresponding tax credit allowed in this state.

173 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
174 commission may by rule define what constitutes an item similar to Subsections (1)(o)(i)
175 through (iv).

176 **Section 2. Retrospective operation.**

177 This bill has retrospective operation for a taxable year beginning on or after January 1,
178 2019.